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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,943	12/13/2005	Peter Fuchs	27656/40689	2667
<div>4743 7590 04/13/2009 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357</div>				
<div>EXAMINER HYLTON, ROBIN ANNETTE</div>				
<div>ART UNIT 3781</div>		<div>PAPER NUMBER</div>		
<div>MAIL DATE 04/13/2009</div>		<div>DELIVERY MODE PAPER</div>		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,943

Applicant(s)

FUCHS, PETER

Examiner

ROBIN HYLTON

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on August 4, 1008. These drawings are not approved as they present **new matter**. It is not clear the location, size, and/or shape of the "snap" elements are depicted as applicant had intended by the initial disclosure.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "closure comprises a spout with a twist away element and a removable cap".

Claim Rejections - 35 USC § 112

3. Claims 1-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no disclosure for the closure comprising a spout and a removable cap. The original disclosure sets forth a container comprising a spout and a removable cap in the drawing figures and throughout the written description.

4. Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It appears the claims are setting forth the structure of the container as structure of the closure. The claimed structure requires clarification.

Claim Rejections - 35 USC § 102

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 1, 4-6, 8, 10-13, 15, 16, 19, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Deussen (US 4,134,511). Disclosed is a container **10** having a spout **12** with a twist-away cap **15** and a removable closure **18**. A centering-aid is inherently formed on the outer surface of the axial wall of the spout neck **12** and the inner surface of the cap wall (**20**) as defined by the co-acting shapes. To the degree set forth in the claims, the wrench or socket (**21**) is an inward continuation of the second guiding surface. Additionally, the rounded opening of the socket at the bottom wall of the inner surface of the cap acts as centering guide onto the twist-away portion (**15**) of the spout.

Claim Rejections - 35 USC § 103

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deussen.

Deussen discloses the claimed container except for the conic shape of the first guiding surface and the second guiding surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make both the first guiding surface and the second guiding surface of a conic shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art. *In re Dailey*, 149 USPQ 47 (CCPA 1976). Doing so provides a mating surface engagement between the spout and cap.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deussen.

Deussen discloses the claimed closure except for mating threads.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the snap fit means with mating threads since the examiner takes Official Notice of the equivalence of snap on means and mating threads for their use in the art and the selection of any of these known equivalents to would be within the level of ordinary skill in the art. Providing mating threads allows for a more deliberate effort to remove of the cap from the spout.

9. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deussen in view of Bayer (US 4,688,703).

Deussen discloses the claimed container except for the multi-fold symmetry.

Bayer teaches a twist-away element having a multi-fold symmetry.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the twist-away element with a multi-fold symmetry. Doing so allows for better grasping and twisting of the twist-away element.

Allowable Subject Matter

10. Claim 2, 9, 14, and 21 appear to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments filed January 27, 2008 have been fully considered but they are not persuasive.

Applicant's remarks regarding the drawing objections are not persuasive. Although the specification does set forth "rims and/or noses" are possible for snap members. There is no

disclosure as to the specific location, size, and/or shape of the "snap" elements as now depicted by new drawing Fig. 7.

Regarding the rejection under 35 USC 112, first paragraph, the examiner disagrees with applicant's arguments. Applicant asserts support for the claim limitation is found in the specification at page 2, lines 33 to page 3, line 2. This text is reproduced herein for better reference with key passages intentionally accented.

"The closure is shown in a sealed state. In this sealed state a twist away element 3, which functions as a safety seal, is on the dispensing nozzle or spout 10, such that there is no opening. The presence of the twist away element 3 guarantees that the package hasn't been opened before or tampered with. **The closure comprises a removable cap 2."**

Applicant argues the closure is disclosed as having a spout and a removable cap. This is clearly not supported by the written specification or the drawings. See Figure 2 of the instant drawings depicts the removable cap (2) spaced away from the container (1) comprising a nozzle and twist-off element (3). Moreover, how could the closure as illustrated have a wrench to remove the nozzle without the cap being removed?

Regarding the rejection under 35 USC 102 in view of Deussen, applicant has misconstrued the purported support at column 3, lines 25-26 and Fig. 1. The supposed references indicate there is an axial gap (19) between the inner cap wall bottom surface and the top of the nozzle wall. This does not preclude the inner surface of wall (20) from centering the cap onto the nozzle neck.

Regarding the configuration of the cap, applicant argues the cap of Deussen does not provide the wrench or socket as an inward continuation of the second guiding surface. This is

not persuasive since applicant has provided no specifics of this limitation in the specification. Thus, the claim limitation is given its broadest, reasonable interpretation. A "continuation" of the second guiding surface is interpreted to mean there is no break in the cap wall; not that there has to be a straight line from the second guiding surface to the wrench or socket.

Applicant's remarks regarding the rejection under 35 USC 103 in view of Deussen and Bayer are confusing since the argument is not consistent with the rejection. The rejection did not address Bayer as a teaching reference for continuing the guiding surface to the wrench or socket. The argument is ineffective to overcome the rejection.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without

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specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday, Tuesday, Thursday, and Friday from 8:00 a.m. to 2:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

April 3, 2009

/Robin A. Hylton/
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GAU 3781